Ivaco Steel Processing (New York) LLC *and* Theo Davis Mann, Trustee in Bankruptcy and United Steelworkers of America, Local 4447-07. Case 3–CA–24481

March 4, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on September 30 and December 24, 2003, respectively, the General Counsel issued the complaint on December 24, 2003, against Ivaco Steel Processing (New York) LLC (hereafter Ivaco Steel), and Theo Davis Mann, trustee in bankruptcy, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act.[1] The Respondent failed to file an answer.

On January 27, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On January 30, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by January 7, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 14, 2004, notified the Respondent that unless an answer was received by January 21, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,[2] we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Ivaco Steel, a corporation with an office and place of business at 3937 River Road, Tonawanda, New York, has been engaged in the manufacture of steel rods.

Annually, until about September 19, 2003, Ivaco Steel, in conducting its business operations described above, sold and shipped from its Tonawanda facility goods valued in excess of $50,000 directly to points outside the State of New York.

Since about October 10, 2003, Theo Davis Mann has been duly designated by the United States Bankruptcy Court, Northern District of Georgia, as the trustee in bankruptcy of Ivaco Steel, with full authority to continue its operations and to exercise all powers necessary to the administration of its business.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that United Steelworkers of America, Local 4447-07 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names, and have been supervisors of Ivaco Steel within the meaning of Section 2(11) of the Act, and agents of Ivaco Steel within the meaning of Section 2(13) of the Act:

Michael Boudreault—Director of Human Resources.

Richard Moore —Plant Manager, from a date presently unknown to about September 19, 2003.

Renee Klawon —Controller, from a date presently unknown to about September 19, 2003.

[1] The Board has historically considered a bankruptcy trustee having authority to continue the business to be an alter ego of the company that existed before the bankruptcy petition was filed. *Wheels Transportation Services*, 340 NLRB No. 130, slip op. at 1, fn. 2 (2003). Accordingly, we shall refer to both Ivaco Steel and bankruptcy trustee Mann as "the Respondent." See *id.*

[2] It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

The following employees of Ivaco Steel, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> (A)ll full-time production and maintenance employees employed at Ivaco Steel Processing (New York) LLC, (excluding) (a)ll office, clerical, guards, quality technicians and supervisors as defined in the National Labor Relations Act.

Since about 1997, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by Ivaco Steel. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from April 16, 2002, until April 15, 2006, and which was superseded by a plant closing agreement, executed on June 18, 19, and 27, 2003.

At all times since about 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 17, 2003, the Respondent has failed and refused to adhere to the terms and conditions set forth in the plant closing agreement referred to above, including severance pay and medical and dental insurance benefits.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing, since September 17, 2003, to adhere to the terms and conditions set forth in the plant closing agreement, including severance pay and medical and dental insurance benefits, we shall order the Respondent to comply with the provisions of the plant closing agreement and to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. In addition, we shall order the Respondent to make all required benefit fund payments or contributions, if any, that have not been made since September 17, 2003, including any additional amounts applicable to such payments or contributions as set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). We shall also require the Respondent to reimburse unit employees for any expenses ensuing from its failure to comply with the provisions of the plant closing agreement relating to medical and dental insurance benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, because the Respondent has closed its facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of any unit employees who were employed by the Respondent on or after September 17, 2003, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Ivaco Steel Processing (New York) LLC and Theo Davis Mann, trustee in bankruptcy, Tonawanda, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to adhere to the terms and conditions of its plant closing agreement with United Steelworkers of America, Local 4447-07 covering the employees in the appropriate unit, including severance pay and medical and dental insurance benefits. The appropriate unit is:

> (A)ll full-time production and maintenance employees employed at Ivaco Steel Processing (New York) LLC, (excluding) (a)ll office, clerical, guards, quality technicians and supervisors as defined in the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the provisions of the plant closing agreement, including severance pay and medical and dental insurance benefits, and make whole the unit employees, with interest, for any loss of earnings or other benefits they may have suffered as a result of the Re-

spondent's failure to do so since September 17, 2003, as set forth in the remedy section of this Decision.

(b) Make all required benefit fund payments or contributions, if any, that have not been made since September 17, 2003, and reimburse unit employees for any expenses ensuing from its failure to comply with the provisions of the plant closing agreement relating to medical and dental insurance benefits, with interest, as set forth in the remedy section of this Decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[3] to the Union and all unit employees who were employed by the Respondent on or after September 17, 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 4, 2004

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Robert J. Battista, Chairman

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Dennis P. Walsh, Member

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Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to adhere to the terms and conditions of our plant closing agreement with United Steelworkers of America, Local 4447-07 covering the employees in the appropriate unit, including severance pay and medical and dental insurance benefits. The appropriate unit is:

(A)ll full-time production and maintenance employees employed at Ivaco Steel Processing (New York) LLC, (excluding) (a)ll office, clerical, guards, quality technicians and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL comply with the provisions of the plant closing agreement, including severance pay and medical and dental insurance benefits, and WE WILL make whole the unit employees, with interest, for any loss of earnings or other benefits they may have suffered as a result of our failure to do so since September 17, 2003.

WE WILL make all required benefit fund payments or contributions, if any, that have not been made since September 17, 2003, and WE WILL reimburse unit employees for any expenses ensuing from our failure to comply with the provisions of the plant closing agreement relating to medical and dental insurance benefits, with interest.

IVACO STEEL PROCESSING (NEW YORK) LLC